

ORDINANCE NO. 09- 343

**AN URGENCY ORDINANCE OF THE CITY OF LOS ALTOS ADDING A NEW CHAPTER 4.45 ENTITLED "MEDICAL MARIJUANA DISPENSARIES AS A PROHIBITED USE" TO THE LOS ALTOS MUNICIPAL CODE TITLE 4, ENTITLED "BUSINESS LICENSES AND REGULATIONS."**

WHEREAS, the voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable seriously ill persons to obtain, use and cultivate medical marijuana for medical use under limited, specified circumstances; and

WHEREAS, the State enacted Senate Bill 420, the Medical Marijuana Program Act ("MMPA") in 2003, effective January 1, 2004, to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and WHEREAS, as a result of the Act and MMPA, individuals have established medical marijuana dispensaries in various cities in California; and

WHEREAS on June 6, 2005, the California Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S. Ct. 2195 which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and, under the CSA, the power to prohibit local cultivation and use of marijuana even though it would be in compliance with California law; and

WHEREAS, in February 2009 the U.S. Attorney General stated that federal law enforcement official would ease enforcement at medical marijuana dispensaries, and in October 2009, the U.S. Department of Justice issued a memorandum stating that federal resources should not be focused on prosecution of individuals whose actions are in clear and unambiguous compliance with existing state laws providing for medical use of marijuana; and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city; however, several California cities have reported an increase in crime, such as burglary, robbery, odor, loitering around the dispensaries, an increase in vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, the City has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of dispensaries and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments; and

WHEREAS, based on the lack of any consistent experience of cities statewide and in the absence of any City regulatory program regarding the review of the establishment and operation of medical marijuana dispensaries, the City finds the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City will result in a current and immediate threat to public health, safety and welfare; and

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines implementing the California Environmental Quality Act of 1970, as amended, because the ordinance would not result in a direct or reasonably foreseeable indirect physical change in the environmental.

The City Council of the City of Los Altos does hereby ordain as follows:

**AMENDMENT OF CODE:** Title 4 of the Los Altos Municipal Code entitled "BUSINESS LICENSES AND REGULATIONS" is hereby amended to add a new Chapter 4.45, Sections 4.45.010 to read as follows:

**"4.45.010 Medical Marijuana Dispensary as a Prohibited Use.**

"Medical Marijuana Dispensary" or "Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following:

A primary caregiver;

A qualified patient; or

A patient with an identification card.

All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*

A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law:

A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;

A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;

A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;

A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;

A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;

A residential hospice; or

A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 *et seq.*

A medical marijuana dispensary as defined above shall not be established, operated or maintained at any location within the City, even if located with an otherwise permitted use."

**CONSTITUTIONALITY.** If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

**PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**EFFECTIVE DATE:** This ordinance, pursuant to Government Code section 36937, is hereby declared to be necessary as an urgency measure for the preservation of the public peace, health, safety and property in the City, and as such shall take effect immediately and be in full force and effect after its adoption after publication at least once in an official newspaper of the City for the following reasons:

The City Council finds that to avoid the conflict in the state and federal law and the enforcement concerns created by such conflicts, the City Council desires to prohibit medical marijuana dispensaries in all locations within the City.

The City Council further finds that this ordinance must be adopted as an urgency ordinance and is necessary to:

Prevent the establishment of illegal medical marijuana dispensaries and to protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments;

Avoid an increase in crime, such as burglary, robbery, odor, loitering around the medical marijuana dispensaries, an increase in vehicular traffic and noise in the vicinity of medical marijuana dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from medical marijuana dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

Avoid confusion and assure the public what rules, regulations and procedures will apply to medical marijuana dispensaries.

In order to accomplish these goals, LAMC Chapter 4.45 must be adopted by means of this urgency ordinance.

**PASSED FOR THE PURPOSE OF PUBLICATION** this 8<sup>th</sup> day of December 2009, by the following vote:

AYES: SATTERLEE, CARPENTER, BECKER, CASAS  
NOES: NONE  
ABSENT: PACKARD

  
David Casas, MAYOR

Attest:

  
Susan Kitchens, CITY CLERK

DATE: December 8, 2009